

## Independent Professional Contract

### BROKERAGE

(version 90616.9094.1.0/4.1.3)

#### THE SIGNATORIES:

**Staffing Management Services B.V.**, a private limited liability company with its registered office and business address at Oostmanslaan 71, (3063 AN) Rotterdam, registered with the Chamber of Commerce under number 24438716, duly represented by G.J. Schellingerhout and hereinafter referred to as "Staffing";

and

<legal format> <**business name**>, with its registered office at <address>, (<postcode>) <town>, registered with the Chamber of Commerce under number <CoC number>, VAT number <VATno>, duly represented by <Contractor> and hereinafter referred to as the "Contractor",

jointly referred to below as the "**Parties**";

#### WHEREAS:

- Staffing deploys experts for the performance of work involved in developing projects for its Clients;
- the Contractor is prepared to make his knowledge and experience available temporarily to Staffing's Client(s) in the areas desired by Staffing;
- Staffing wishes to use the Contractor's services;
- the Contractor is prepared to do this work in that capacity, which will be done for or at the premises of one of Staffing's Clients;
- the Parties are desirous of contracting with each other purely on the basis of a contract for services, within the meaning of Articles 7:400 et seq. of the Dutch Civil Code ('DCC');
- the Parties are explicitly not contemplating entering into an employment contract within the meaning of Articles 7:610 et seq. DCC;
- the Parties explicitly wish to avoid application of a notional employment relationship contracted by brokerage<sup>1</sup>
- the Parties are opting in appropriate cases to disregard the notional employment relationship of home workers or equally treated workers<sup>2</sup>, and are therefore finalising and signing the Contract before payment

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<sup>1</sup> Article 2a of the Wages Tax (Implementation) Decree 1965 and Article 3 of the Decree designating cases where a working relationship is deemed to be employment (Decree of 24 December 1986, Bulletin of Acts and Decrees 1986, 655).

<sup>2</sup> Articles 2b and 2c of the Wages Tax (Implementation) Decree 1965 and Articles 1 and 5 of the Decree designating cases where a working relationship is

is made;

- the Parties wish to establish the terms and conditions under which the Contractor will do his work in this Agreement;
- in addition, the Parties record the following details in the **Contract Confirmation**:
  - the project description;
  - the rate;
  - the duration and scope of the agreement;
  - the Client.
- this Agreement is based on the model agreement assessed and approved by the Dutch Dutch Tax & Customs Authority on 8 June 2016 under number 90616.9094.1.0;

## HAVE REACHED THE FOLLOWING AGREEMENT

### 1. THE ASSIGNMENT

- 1.1. The Contractor undertakes to perform the work described in this Agreement and the associated **Contract Confirmation** for the duration of the Agreement.

### 2. ACCEPTANCE AND GENERAL PROVISIONS RELATING TO THE ASSIGNMENT

- 2.1. The Contractor accepts the assignment specified in the Contract Confirmation pertaining to this Agreement and thereby accepts full responsibility for the correct performance of the agreed work.
- 2.2. The Contractor must abide by generally accepted standards of conduct and propriety and will also comply with any rules and obligations imposed upon Staffing's Client by any body, including government bodies. The Contractor will allocate his work independently and perform the work stemming from the Assignment independently. He will perform the agreed work as he sees fit and without supervision or direction from Staffing and/or its Client. Staffing and/or its Client may still issue instructions concerning the intended objective or results of the Assignment, so far as this does not impinge upon the method of performing the Assignment. As far as this is required for the performance of the Assignment, working alongside others will be harmonised with Staffing and/or its Client so that this runs as smoothly as possible. If this is necessary for the work, the Contractor will comply with the working hours of Staffing and/or its Client.
- 2.3. Staffing and its Client explicitly confirm their agreement to the Contractor also being allowed to work for other clients.
- 2.4. The Contractor must ensure, prior to the commencement of the work, that Staffing can verify his identity. Staffing will check the Contractor's educational qualifications by means of examining diplomas and certificates for courses taken. Staffing will also check whether the Contractor has the required permits and that the Contractor complies with the relevant statutory requirements in order to work for Staffing, all in

accordance with current legislation. Staffing is entitled to requisition the documents that should be produced and these must be provided within three (3) working days.

- 2.5. The Contractor must arrange for a Certificate of Good Conduct (VOG) to be handed to Staffing before the commencement of the work, and this Certificate may not have been issued by the competent authorities more than six (6) months before the commencement of the work. The Contractor is financially responsible for the cost of this Certificate.

### **3. LIABILITY / LOSSES**

- 3.1. The Contractor is liable for all losses caused by himself or by any third parties he may engage to Staffing or to third parties in the context of the performance of the work under this Agreement. The Contractor is also liable for all losses sustained by Staffing resulting from the fact that the Contractor has not fulfilled his obligations in connection with the Agreement or has not done so adequately.
- 3.2. Staffing accepts no liability for and the Contractor will indemnify Staffing in respect of any demand or claim instituted against Staffing in relation to illness, injury and/or death of any third parties that may be engaged by the Contractor and/or losses and/or damage to the property of the third parties engaged by the Contractor or of the Contractor himself, except in situations where the demand or claim results from actions by Staffing itself.
- 3.3. Staffing must compensate the Contractor for all losses not attributable to the Contractor and sustained by him in the context of performing the assignment, due to the manifestation of any specific hazard associated with the assignment that is beyond the risks normally entailed in the performance of the Contractor's profession.
- 3.4. The Contractor indemnifies Staffing and Staffing's Client in respect of all claims by third parties associated with and/or arising from the performance by the Contractor, or any substitute for the Contractor, of the work under this Agreement.
- 3.5. For the allocation of liability between Staffing and the Contractor, the standards of reasonableness and fairness must be observed, along with the normal limitations of liability in the sector.

### **4. PREVENTION OF A NOTIONAL EMPLOYMENT RELATIONSHIP CONTRACTED BY BROKERAGE**

- 4.1. Staffing and the Contractor wish to avoid the application of a notional employment relationship contracted by brokerage. It is important for this that the Contractor performs the work in the exercise of a business or the independent exercise of a profession. Staffing may reasonably assume that this is the case (presumption of proof) if, in supplement to this Agreement, Staffing:
- a) confirms:
    - the registration of the Contractor with the Chamber of Commerce;
    - the Contractor's VAT number; and
  - b) has in any event made arrangements concerning:
    - the Contractor's liability towards Staffing and Staffing's Client (clauses 3 and 9);

- a non-compete and/or non-solicitation clause that does not unreasonably restrict the Contractor when acquiring or performing assignments for other customers (clause 2.3);
- Staffing's risk of non-payment by the Client. These provisions are included in this Agreement (clause 7).

4.2. The presumption of proof in paragraph 1 of this clause does not apply if the Contractor primarily works for Staffing on the basis of (successive) assignments of (collectively) longer duration than is normal, having regard to the nature of the work.

## 5. TERMINATION

- 5.1. The Parties may terminate this Agreement prematurely, without providing reasons, but subject to observing a notice period of 25 calendar days for Staffing and 30 calendar days for the Contractor. Termination must be effected in writing. The periods of notice mentioned above start on the date of the written notice.
- 5.2. Either Party may terminate this Agreement with immediate effect and without judicial intervention, in full or in part, if:
- the other Party fails to comply with its obligations under this Agreement;
  - an application for bankruptcy is filed against the other Party, or the other Party seeks a moratorium on payments or application of the Debt Protection (Natural Persons) Act, or if the other Party goes into liquidation.
- 5.3. Staffing is entitled to terminate this Agreement with immediate effect and without judicial intervention, in full or in part, if:
- the Contractor is unable to perform the assignment, for whatever reason (including illness lasting for more than four weeks);
  - the Contractor cannot comply with his obligations in terms of this Agreement;
  - the Contractor fails to exhibit his claimed knowledge, experience or skill, this to be decided by Staffing's Client, in which case Staffing may terminate the Agreement with immediate effect without being liable for any costs of whatever nature;
  - the agreement between Staffing and its Client, which underlies the present Agreement, comes to an end for whatever reason.
- 5.4. Staffing may terminate the Agreement by sending written notice to the Contractor if the Contractor has influenced or attempted to influence the finalisation of the Agreement by offering or providing or arranging to offer or provide a personal benefit to any employees of Staffing and/or Staffing's Client or to any other person related to Staffing and who is involved in the finalisation of the Agreement.

## 6. RATE

- 6.1. The rate that the Contractor may charge to Staffing is recorded in the **Contract Confirmation** pertaining to this Agreement. Unless otherwise indicated, this rate is an all-in rate including accommodation and travel expenses and other costs. Unless otherwise indicated, this rate applies to all hours worked,

irrespective of the time of day.

- 6.2. Staffing will not be due to pay any fee for any period during which the Contractor is unable to perform the assignment, for whatever reason (such as illness or holidays).
- 6.3. If Staffing's Client does not or does not fully comply with its payment obligations to Staffing and the reason for this is attributable to the Contractor, then the Contractor will have no right to payment of the fee to that extent and any fee already paid must be refunded if and to the extent that the Contractor has received funds or had his account credited.
- 6.4. The Contractor may not charge Staffing for the time and costs involved in the Contractor taking any courses, training and suchlike required for the proper performance of the assignment.
- 6.5. **If any resources belonging to Staffing's Client are necessary for the performance of the assignment, Staffing's Client may charge the associated costs to the Contractor.** Staffing does not provide any resources.

## **7. TIME RECORDING, INVOICING AND PAYMENT**

- 7.1. The Contractor will submit time recording forms to Staffing each month, signed as approved by a project leader for Staffing's Client. If the time recording form is not signed by an authorised project leader at Staffing's Client or if the legitimacy or accuracy of the time recording form is challenged, Staffing will not process the associated invoice.
- 7.2. If it transpires after the event that the invoice submitted by the Contractor was not legitimate or correct, the Contractor is obliged to refund any excess payment when first asked to do so by Staffing.
- 7.3. The Contractor must issue invoices within two (2) months after the end of the month to which the work relates, by means of an invoice prepared by the Contractor including a time recording form that has been signed as approved. If Staffing has not received the invoice from the Contractor within two (2) months and, as a result of this delay, the Client is no longer obliged in law to make payments to Staffing and does not do so, Staffing will no longer be obliged to proceed with payment of the Contractor's invoice. Staffing will arrange for payment unless the invoice is not approved. Invoicing procedures for each Client may be downloaded from the hiring desk at the relevant Client.
- 7.4. Payment of the Contractor's invoice will occur four days after Staffing receives payment of the invoice from its Client. Staffing's financial records are decisive for this, failing evidence to the contrary produced by the Contractor. The payment period for Staffing's Client is included in the hiring conditions for the relevant Client.
- 7.5. The Contractor is aware that he runs a risk of bad debt. This means that if the Client fails to pay invoices from Staffing, for whatever reason, Staffing will not be obliged to pay the corresponding invoices to the Contractor.
- 7.6. If Staffing's Client is affected by a force majeure situation, resulting in the Contractor being unable to do any further work for the Client, Staffing is entitled to extend the payment period by 60 days.

## **8. TAXES AND SOCIAL INSURANCE PREMIUMS**

- 8.1. This Agreement is intended to be a contract for services within the definition in Articles 7:400 et seq.,

DCC. Accordingly, the Client will not deduct and pay any wages tax or employee insurance premiums from the fees in connection with this Agreement.

- 8.2. In the event that Staffing and/or its Client are at any point be confronted with one or more (additional) tax assessments for wages tax or national insurance in connection with this Agreement (for instance on the basis of an actual or notional employment relationship), the Contractor will indemnify those parties in respect of any associated claims. The Contractor will pay or refund any associated amounts when first asked to do so by Staffing.
- 8.3. Wages tax and national insurance are included in the rate mentioned in clause 6.
- 8.4. If the situation mentioned in clause 8.2 arises, the Contractor is entitled – where possible together with Staffing's Client and/or Staffing – to challenge the opinion of the Dutch Tax & Customs Authority regarding the alleged withholding and payment obligation before he proceeds with payment.
- 8.5. Clauses 8.3 and 8.4 equally apply if the Contractor claims or alleges at any point that the working relationship between him and Staffing or its Client should be classed as a (actual and/or notional) employment relationship.

## **9. LIABILITY**

- 9.1.1. If either Party culpably fails to comply with the Agreement or commits an unlawful act, that Party will indemnify the other Party for any ensuing damage up to a maximum of EUR 500,000 per event, with a series of consecutive events being deemed to be a single event.
- 9.1.2. If the damage is caused by viruses introduced into the software by the Contractor or other defects, or if the Contractor infringes any third-party rights, the Contractor must pay any ensuing damage up to a maximum of EUR 1,000,000 per event, with a series of consecutive events being deemed to be a single event. The limitations of liability included in the foregoing paragraphs do not apply if the damage is caused by wilful misconduct or gross negligence.
- 9.1.3. If the Contractor is due any penalty and has been guilty of any failure, Staffing's right to demand performance and/or compensation will remain in full force and effect at all times. The amount of the penalty will be deducted from the amount of the loss.
- 9.1.4. In all cases where Staffing's Client and/or Staffing makes any property available to the Contractor, the Contractor is liable for all losses arising to the property, including damage occasioned by fire and theft.
- 9.2. The Contractor indemnifies Staffing in respect of all claims by third parties arising from damage caused by the Contractor in the course of the work done for Staffing and its Client.
- 9.3. The Contractor must conclude adequate professional and liability insurance, covering the Contractor's liability under the Agreement.

## **10. CONFIDENTIALITY**

- 10.1. The Contractor undertakes to observe complete confidentiality in relation to all data concerning Staffing, Staffing's Client and the assignment which comes to the Contractor's knowledge during the performance of the assignment.
- 10.2. The Contractor will not in any way publicise the trade names of Staffing and/or its Client and/or the

existence of the Agreement, without prior written consent from Staffing.

- 10.3. The Contractor undertakes to sign any confidentiality statement by Staffing's Client immediately, for which the Contractor enters into a **Contract Confirmation** with Staffing. If Staffing's Client uses a confidentiality statement, this can be found at the hiring desk of the Client in question. An original, signed copy of this statement should be sent to Staffing. If Staffing's Client and then Staffing demonstrate that the provisions under the confidentiality statement have not been complied with or discovers that the Contractor has not complied with the obligations set out in this clause, Staffing will be entitled to sue for compensation for the damage actually sustained. The confidentiality statement remains in force for one year after the work done for Staffing and its Client comes to an end.

## 11. MISCELLANEOUS

- 11.1. The Parties will notify each other as soon as possible if there is any threat of changes to their mutual relationship or the relationship with Staffing's Client.
- 11.2. Staffing's Client has exclusive ownership rights to whatever the Contractor may produce during the performance of the assignment. Should the law provide that such ownership accrues to the Contractor, the Contractor hereby transfers this right to Staffing's Client and also hereby waives any right to payment for this.
- 11.3. If Staffing's Client imposes any further conditions upon Staffing in relation to the intellectual property rights after the conclusion of this Agreement, Staffing will notify the Contractor accordingly and those further conditions will apply as between Staffing and the Contractor from that point onwards.
- 11.4. The Contractor warrants that he will not infringe any intellectual property rights belonging to third parties during the performance of his work.
- 11.5. The Contractor also fully indemnifies Staffing and Staffing's Client in the event that any claim is submitted against them in this respect. If, in connection with these third-party rights, there is an injunction against using whatever the Contract has produced, the Contractor will arrange for the production of an equivalent replacement for what he has produced or else will acquire the rights to the intellectual property or else will take back the work he has produced in exchange for repayment of whatever Staffing and/or Staffing's Client have paid for this.
- 11.6. A director and majority shareholder of all shares in a private limited company ('DGA-BV') must submit to Staffing every quarter, when first asked to do so by Staffing, a 'certificate of payment conduct for hiring liability' (*Verklaring betalingsgedrag inlenersaansprakelijkheid*) from the Dutch Tax & Customs Authority. Staffing will suspend payment of the invoice(s) if no certificate is provided or if an incorrect certificate is provided, until Staffing receives the correct certificate.

## 12. GENERAL PROVISIONS

- 12.1. Changes and/or additions to this Agreement are only valid if and in so far as they are agreed in writing between the Parties.
- 12.2. This Agreement is governed exclusively by the substantive law of the Netherlands. The competent court in Amsterdam has jurisdiction in respect of all disputes arising from the Agreement.

- 12.3. Articles 7:400 et seq. of the Dutch Civil Code apply to this Agreement except as otherwise specifically provided in this Agreement.
- 12.4. Staffing may suspend all payments to the Contractor under this Agreement if the Contractor does not supply any document or certificate (e.g. confidentiality statement, screening, diplomas) mentioned in this Agreement or in the **Contract Confirmation** within the indicated time limit. If the Contractor has not supplied the documents within forty-five (45) days after the end of the indicated time limit, Staffing may terminate the Agreement immediately, without judicial intervention.
- 12.5 The **Contract Confirmation** forms an integral part of this Agreement.

Thus agreed and signed (digitally) on \_\_\_\_\_ (date)

Staffing Management Services B.V. <legal format> <company name>

<authorised signatory/name>

<authorised signatory/name>

<position>

<position>